

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:93-CR-123-01-F

GERALD FELTON,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA)
Respondent.)

O R D E R

This matter is before the court on Gerald Felton's pro se "Motion to Amend Record for the purpose of sentencing pursuant to Fed. Rules of Crim. P. (36)," [DE-112], filed on May 18, 2011. As evidenced by the case file number, this matter has a long history. Most recently, the Fourth Circuit Court of Appeals dismissed [DE-99] Felton's appeal of this court's April 29, 2010, order [DE-79], denying Felton's request [DE-65, -66] to supplement his § 2255 motion.

The gravamen of Felton's latest motion is that he is entitled, pursuant to Rule 36, FED. R. CRIM. P., to be re-sentenced under a post-*Booker*,¹ advisory U.S. Sentencing Guidelines ("U.S.S.G.") scheme. Felton explains that at re-sentencing, the court would consider many factors present at the time of the original sentencing hearing on April 11, 1994, together with all Felton's "post-offense rehabilitive [sic] efforts." Felton also suggests that the court re-evaluate his entitlement to a downward departure for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1. In support of his motion, Felton has attached a number of Exhibits, which he seeks to add to the record in this case to support this most recent request for a reduction in his sentence.

Rule 36, entitled "Clerical Error," does not authorize the relief Felton seeks. Felton again is asking that the court reduce his sentence, which relief must be pursued by instituting a

¹ *Booker v. United States*, 543 U.S. 220 (2005).

motion under 28 U.S.C. § 2255. Reference to the docket sheet in this case specifically is made for an overview of Felton's opportunities and attempts over more than a decade and a half to obtain such relief.

Felton's motion to supplement the record with his attached Exhibits A, B, C, D and E to [DE-112] is ALLOWED. However, his motion is DENIED insofar as it seeks re-sentencing.

SO ORDERED.

This the 23rd day of May, 2011.



JAMES C. FOX
Senior United States District Judge